

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS

NICHOLSON-LAYNE, LLC,

Plaintiff,

v.

DRILLGEAR, INC. a/k/a DRILLGEAR USA,

Defendant.

CIVIL ACTION
NO. 05CV10015MLW

PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTERCLAIM

The plaintiff Nicholson-Layne, LLC ("NL"), for answer to the defendant's Counterclaim, states:

FIRST DEFENSE

Pursuant to Fed. R. Civ. P. 8(b), NL responds to the numbered paragraphs of the defendant's Counterclaim as follows:

1. Upon information and belief, admitted.
2. Admitted.
3. Admitted.
4. NL admits that the defendant provided some goods and materials to NL and that the defendant has invoiced NL \$292,328.50 for those goods and materials, but NL denies that the defendant delivered to NL all of the goods and materials required by their agreement.
5. NL admits that it accepted the limited number of goods and materials delivered by the defendant and that it used and incorporated into the project those goods and materials

delivered by the defendant, but NL denies that it has failed and refused to render payment to the defendant because no payment is due on account of the defendant's breach of contract.

6. Denied.

7. Denied.

COUNT I

8. NL incorporates by reference and restates herein its response to paragraphs 1 through 7 of the defendant's Counterclaim, supra.

9. NL admits that the defendant provided some goods and materials to NL and that the defendant has invoiced NL \$292,328.50 for those goods and materials, but NL denies that the defendant delivered to NL all of the goods and materials required by their agreement.

10. Denied.

COUNT II

11. NL incorporates by reference and restates herein its response to paragraphs 1 through 10 of the defendant's Counterclaim, supra.

12. Denied.

13. Denied.

14. Denied.

Pursuant to Fed. R. Civ. P. 8(c), NL sets forth the following affirmative defenses to the defendant's Counterclaim:

SECOND DEFENSE

NL states that the defendant's Counterclaim fails to set forth claims against NL upon which relief may be granted.

THIRD DEFENSE

NL states that if the defendant sustained any damages as alleged in its Counterclaim, then any such damages were the direct result of an act or omission of a person or entity over whom NL had no control and for whom NL is not responsible.

FOURTH DEFENSE

NL states that the defendant's Counterclaim is barred by the doctrines of waiver, release, accord and satisfaction, failure of consideration, unclean hands, laches and/or equitable estoppel, barring recovering from NL.

FIFTH DEFENSE

NL states that the defendant has failed to mitigate its damages.

SIXTH DEFENSE

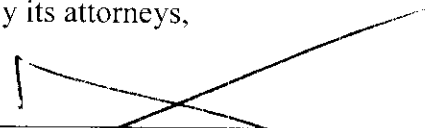
NL states that some or all the defendant's claims against NL are barred because the defendant failed to comply with the terms of its agreement with NL.

SEVENTH DEFENSE

NL is entitled to offset any damages that the defendant claims by all damages which NL has incurred because of the defendant's failure to perform under the terms of its agreement with NL.

WHEREFORE, NL requests that the defendant's Counterclaim against it be dismissed and that judgment enter thereon for it, together with its attorneys' fees and expenses incurred by it in defending against said Counterclaim.

PLAINTIFF NICHOLSON-LAYNE, LLC
By its attorneys,



John P. Connelly, BBO #546670
PEABODY & ARNOLD LLP
30 Rowes Wharf
Boston, MA 02110
(617) 951-2100

Dated: February 28, 2005

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CERTIFICATE OF SERVICE

I, John P. Connelly, hereby certify that I have on this 28th day of February, 2005 caused to be served a copy of the foregoing by regular mail, postage prepaid, upon the defendants' attorneys: Joel Lewin, Esquire and Jeremy Blackowicz, Esquire, Hinckley, Allen & Snyder, LLP, 28 State Street, Boston, MA 02109.



John P. Connelly